

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

**TEX PAT, LLC,
*Relator,***

v.

**(1) INTEGRA LIFESCIENCES HOLDINGS
CORPORATION,
(2) INTEGRA LIFESCIENCES
CORPORATION, and
(3) MINNESOTA SCIENTIFIC INC.,
including division OMNI-TRACT SURGICAL,
*Defendants.***

Civil Action No. 5:11-CV-011

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR FALSE PATENT MARKING

Relator Tex Pat, LLC (“Relator”) makes the following allegations against Integra LifeSciences Holdings Corporation, Integra LifeSciences Corporation, and Minnesota Scientific, Inc., including division Omni-Tract Surgical (collectively, “Integra” or “Defendant”):

NATURE OF THE ACTION

1. This is a *qui tam* action for false patent marking under 35 U.S.C. § 292.

PARTIES

2. Relator is a Texas limited liability company having a principal place of business at 2300 Richmond Avenue, Ste. 345, Houston, TX 77098. Relator has appointed Philip D. Racusin, 2300 Richmond Avenue, Ste. 345, Houston, TX 77098, as its agent for service of process.

3. On information and belief, defendant Integra LifeSciences Holdings Corporation is a Delaware corporation with its principal place of business at 311 Enterprise Drive, Plainsboro, NJ 08536. Integra LifeSciences Holdings Corporation has appointed

Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, as its agent for service of process.

4. On information and belief, defendant Integra LifeSciences Corporation is a subsidiary of Integra LifeSciences Holdings Corporation, and is a Delaware corporation having its principal place of business at 311 Enterprise Drive, Plainsboro, NJ 08536. Integra LifeSciences Corporation has appointed Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, as its agent for service of process.

5. On information and belief, defendant Minnesota Scientific, Inc., including division Omni-Tract Surgical, is a subsidiary of Integra LifeSciences Holdings Corporation and/or Integra LifeSciences Corporation, and is a Minnesota corporation having its principal place of business at 4849 White Bear Parkway, St. Paul, MN 55110. Integra Minnesota Scientific, Inc., including division Omni-Tract Surgical, has appointed Corporation Service Company, 380 Jackson Street #700, St. Paul, MN 55101, as its agent for service of process.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this Forum, including: (i) at least a portion of the false marking, affixing, or advertising alleged herein; and/or (ii) regularly doing or soliciting business, engaging in

other persistent courses of conduct, and/or deriving substantial revenue from goods and/or services provided to individuals in Texas and in this District.

8. Venue is proper in this district under 28 U.S.C. §§1391(b), 1391(c), and 1395(a). Defendant has and/or continues (and/or has and continues to cause others) to transact business in this District, and has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising, in this District, the product(s) subject to this Complaint, which Defendant has and/or continues (and/or has and continues to cause others) to make, use, offer for sale, or sell in, and/or import into, this District.

FACTS

9. Integra has and/or continues (and/or has and continues to cause others) to mark upon, affix to, and/or use in advertising patents, including, by way of example only, U.S. Patent Nos. 4,355,631 (“the ’631 Patent”), 4,617,916 (“the ’916 Patent”), 4,718,151 (“the ’151 Patent”), 4,930,932 (“the ’932 Patent”), 4,949,707 (“the ’707 Patent”), 5,020,195 (“the ’195 Patent”) and D343,235 (“the ’235 Patent”), true and correct copies of which are attached as Exhibits A-G, respectively, in connection with Defendant’s products and/or related product packaging and advertisements, including, by way of example only, the Omni-Flex™ General Surgery Retractor System, FastSystem® Upper Abdominal Retractor System, FastSystem® Stoney Vascular Retractor System, Omni-Flex™ Vascular Retractor System, and FastSystem® Stoney Peripheral Vascular Retractor System products, as illustrated in Exhibits H-L, respectively.

10. The '631 Patent (Exhibit A), which is titled "Surgical Retractor Apparatus with Improved Clamping Device," was filed in the United States on March 19, 1981, issued on October 26, 1982, and was assigned to defendant Minnesota Scientific, Inc.

11. The '631 Patent expired, at the very latest, on March 19, 2001.

12. When the '631 Patent expired, all future rights in that patent ceased to exist.

13. The '916 Patent (Exhibit B), which is titled "Retractor Apparatus," was filed in the United States on November 8, 1984, issued on October 21, 1986, and was assigned to defendant Minnesota Scientific, Inc.

14. The '916 Patent expired, at the very latest, on November 8, 2004.

15. When the '916 Patent expired, all future rights in that patent ceased to exist.

16. The '151 Patent (Exhibit C), which is titled "Retractor Apparatus," was filed in the United States on June 2, 1986 and issued on January 12, 1988. The '151 Patent is a division of S/N 669,362, filed November 8, 1984.

17. The '151 Patent expired, at the very latest, on January 12, 2005.

18. When the '151 Patent expired, all future rights in that patent ceased to exist.

19. The '932 Patent (Exhibit D), which is titled "Quick Release Attachment Mechanism," was filed in the United States on March 29, 1989, issued on June 5, 1990, and was assigned to defendant Minnesota Scientific, Inc.

20. The '932 Patent expired, at the very latest, on March 29, 2009.

21. When the '932 Patent expired, all future rights in that patent ceased to exist.

22. The '707 Patent (Exhibit E), which is titled "Retractor Apparatus," was filed in the United States on January 11, 1988, issued on August 21, 1990, and was assigned to

defendant Minnesota Scientific, Inc. The portion of the term of the '707 Patent subsequent to October 21, 2003 has been disclaimed.

23. The '707 Patent expired, at the very latest, on October 21, 2003.

24. When the '707 Patent expired, all future rights in that patent ceased to exist.

25. The '195 Patent (Exhibit F), which is titled "Clamping Device for Use on a Retractor Support," was filed in the United States on August 16, 1989, issued on June 4, 1991, and was assigned to defendant Minnesota Scientific, Inc.

26. The '195 Patent expired, at the very latest, on August 16, 2009.

27. When the '195 Patent expired, all future rights in that patent ceased to exist.

28. The '235 Patent (Exhibit G), which is titled "Surgical Retractor Blade," was filed in the United States on October 17, 1991, issued on January 11, 1994, and was assigned to defendant Minnesota Scientific, Inc.

29. The '235 Patent expired, at the very latest, on January 11, 2008.

30. When the '235 Patent expired, all future rights in that patent ceased to exist.

31. Subsequent to expiration of the '631 Patent, the '916 Patent, the '151 Patent, the '932 Patent, the '707 Patent, the '195 Patent, and the '235 Patent, Integra has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising these patents in combination with its Omni-Flex™ General Surgery Retractor System products. *See, e.g., Exhibit H* (containing product literature, which was available on Integra's website at or near the time of filing of this Original Complaint,¹ bearing a copyright date of 2006, having an electronic creation date of March 24, 2006, at 3:06:35 pm, and an electronic modification date of March 24, 2006, at 5:01:12 pm, and

¹ Integra's website, accessed by entering the following search string into www.google.com: *Omni-Flex™ Your Patient.Your Approach. General Surgery Retractor System* (last accessed Jan. 13, 2011).

marking, affixing, and/or advertising the Omni-Flex™ General Surgery Retractor System products in combination with '631 Patent, the '916 Patent, the '151 Patent, the '932 Patent, the '707 Patent, the '195 Patent, and the '235 Patent).

32. Subsequent to expiration of the '631 Patent, the '916 Patent, the '151 Patent, the '932 Patent, the '707 Patent, the '195 Patent, and the '235 Patent, Integra has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising these patents in combination with its FastSystem® Upper Abdominal Retractor System products. *See, e.g., Exhibit I* (containing product literature, which was available on Integra's website at or near the time of filing of this Original Complaint,² bearing a copyright date of 2006, having an electronic creation date of February 6, 2006, at 4:12:59 pm, and an electronic modification date of February 16, 2006, at 12:10:20 pm, and marking, affixing, and/or advertising the FastSystem® Upper Abdominal Retractor System products in combination with '631 Patent, the '916 Patent, the '151 Patent, the '932 Patent, the '707 Patent, the '195 Patent, and the '235 Patent).

33. Subsequent to expiration of the '631 Patent, the '916 Patent, the '151 Patent, the '932 Patent, the '707 Patent, the '195 Patent, and the '235 Patent, Integra has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising these patents in combination with its FastSystem® Stoney Vascular Retractor System products. *See, e.g., Exhibit J* (containing product literature, which was available on Integra's website at or near the time of filing of this Original Complaint,³ bearing a copyright date of 2005, having an electronic creation date of July 5, 2005, at

² Integra's website, accessed by entering the following search string into www.google.com: *product facts FastSystem® Upper Abdominal Retractor System* (last accessed Jan. 13, 2011).

³ Integra's website, accessed by entering the following search string into www.google.com: *fastsystem stoney vascular retractor system products* (last accessed Jan. 13, 2011).

8:38:23 am, an electronic modification date of April 25, 2006, at 8:57:19 am, a comment and strikethroughs modification by “kirk.livingston,” and marking, affixing, and/or advertising the FastSystem® Stoney Vascular Retractor System products in combination with ’631 Patent, the ’916 Patent, the ’151 Patent, the ’932 Patent, the ’707 Patent, the ’195 Patent, and the ’235 Patent).

34. Subsequent to expiration of the ’631 Patent, the ’916 Patent, the ’151 Patent, the ’932 Patent, the ’707 Patent, the ’195 Patent, and the ’235 Patent, Integra has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising these patents in combination with its Omni-Flex™ Vascular Retractor System products. *See, e.g., Exhibit K* (containing product literature, bearing a copyright date of 2006, and marking, affixing, and/or advertising the Omni-Flex™ Vascular Retractor System products in combination with ’631 Patent, the ’916 Patent, the ’151 Patent, the ’932 Patent, the ’707 Patent, the ’195 Patent, and the ’235 Patent).

35. Subsequent to expiration of the ’631 Patent, the ’916 Patent, the ’151 Patent, the ’932 Patent, the ’707 Patent, the ’195 Patent, and the ’235 Patent, Integra has and/or continues (and/or has and/or continues to cause others) to mark upon, affix to, and/or use in advertising these patents in combination with its FastSystem® Stoney Peripheral Vascular Retractor System products. *See, e.g., Exhibit L* (containing product literature, which was available on Integra’s website at or near the time of filing of this Original Complaint,⁴ bearing a copyright date of 2005, having an electronic creation date of July 5, 2005, at 8:38:23 am, and an electronic modification date of July 7, 2005, at 8:51:26 am, and marking, affixing, and/or advertising the FastSystem® Stoney Peripheral

⁴ Integra’s website, accessed by entering the following search string into www.google.com: *FastSystem® Stoney Peripheral Vascular Retractor System your patient* (last accessed Jan. 13, 2011).

Vascular Retractor System products in combination with '631 Patent, the '916 Patent, the '151 Patent, the '932 Patent, the '707 Patent, the '195 Patent, and the '235 Patent).

36. Integra is a large, sophisticated company. *See, e.g., Exhibit M* at p. 1 (containing, in part, parent Integra LifeScience Holding Corporation's 2009 Annual Report, which indicates that Integra "is a world leader in regenerative medicine" and "employ[s] approximately 3,000 people around the world").

37. Integra has, and routinely retains, sophisticated legal counsel. *See, e.g., Exhibit M* at pp. 11, 26 (indicating that Integra "ha[s] enforced and plan[s] to continue to enforce and defend [its] patent rights" and that "[v]arious lawsuits, claims and proceedings are pending or have been settled").

38. Integra has decades of experience applying for, obtaining, licensing, and/or litigating patents. *See, e.g., Exhibit M* at p. 11 (noting that Integra "seek[s] patent protection for [its] key technology, products and product improvements, both in the United States and in selected foreign countries").

39. Integra knows, and at the very least reasonably should know, that the above expired patents do not cover any of the above Integra products, or any products whatsoever. *See, e.g., Exhibit M* at p. F-9 (demonstrating Integra's internal tracking of the lifespan of intellectual property assets).

40. As a result of its false marking, Integra has injured the United States Government, including its sovereign interest, and Defendant's existent and potential competitors, as well as the general public, including Relator—a member of the general public incurring the time and expense associated with enforcement. *See, e.g., Exhibit M* at p. 15 ("Our

future success will depend upon our ability to compete effectively against current technology as well as to respond effectively to technological advances.”).

CLAIM

41. Relator incorporates paragraphs 1–40 as if fully set forth herein. Integra has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its products, including, without limitation, the Omni-Flex™ General Surgery Retractor System, FastSystem® Upper Abdominal Retractor System, FastSystem® Stoney Vascular Retractor System, Omni-Flex™ Vascular Retractor System, and FastSystem® Stoney Peripheral Vascular Retractor System products, with intent to deceive the public.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully requests that this Court enter:

- (a). A judgment in favor of Relator that Defendant has falsely marked items in violation of 35 U.S.C. § 292;
- (b). A monetary award pursuant to 35 U.S.C. § 292 in the form of a civil fine of \$500 per falsely marked article, or an alternative amount, as set by the Court, one-half of any such award to be paid to the United States;
- (c). An accounting for any falsely marked articles not presented at trial and a monetary award set by the Court for such falsely marked articles;
- (d). An award of pre-judgment and post-judgment interests on any monetary award;
- (e). An injunction prohibiting Defendant, and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and

those in active concert or participation with any of them, from violating 35

U.S.C. §292; and

- (f). Any and all other relief, at law or equity, to which Relator may show itself to be entitled.

DEMAND FOR JURY TRIAL

Relator, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: January 13, 2011

Respectfully submitted,

By: /s/ Hao Ni

Hao Ni – LEAD COUNSEL
State Bar No. 24047205
Ni Law Firm PLLC
3102 Maple Avenue, Suite 400
Dallas, TX 75201
(214) 800-2631
hni@nilawfirm.com

Tyler K. Brochstein
State Bar No. 24059490
Brochstein Law Firm, PLLC
2820 McKinnon Street, Suite 4063
Dallas, TX 75201
(214) 444-3310
tyler@brochlaw.com

Jack L. Siegel
State Bar No. 24070621
Jack L. Siegel PLLC
3530 Travis Street, Suite 421
Dallas, TX 75204
(214) 699-1498
jack@jlsiegellaw.com

**Attorneys for Relator
TEX PAT, LLC**